

Message Text

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ACTION L-03

INFO OCT-01 IO-14 AF-10 ARA-16 EA-11 EUR-25 NEA-10 RSC-01

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L FOR ALDRICH

E.O. 11652: N/A

TAGS: PFOR, UN

SUBJECT: HUMANITARIAN LAW OF ARMED CONFLICT - WESTERN
GROUP CONSULTATIONS

1. FIRST TWO DAYS OF WESTERN GROUP CONSULTATIONS HAVE
CONSISTED OF EXCHANGES OF VIEWS PRIMARILY ON TECHNICAL
POINTS IN ICRC DRAFT ARTICLES. COMMENTS BY OTHER
DELEGATIONS HAVE CENTERED LARGELY ON THOSE ARTICLES
WHICH HAVE BEEN IDENTIFIED IN COURSE OF INITIAL USG
REVIEW AS POTENTIALLY TROUBLESOME, BUT PROPOSED SOLUTIONS
HAVE VARIED CONSIDERABLY IN SOME CASES.

2. SIR COLIN CROWE WAS INITIALLY INCLINED TO ESTABLISH
WORKING GROUPS TO TRY TO DEAL WITH SOME OF MORE
TROUBLING ASPECTS, SUCH AS DEFINITION OF "PROTECTED
PERSONS" AND "PROTECTED OBJECTS" IN ARTICLE 2(C) OF
DRAFT PROTOCOL I. HOWEVER, US DEL AND OTHERS HAVE
TAKEN POSITION THAT, SINCE WE ARE NOW PREPARING FOR
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DIPLOMATIC CONFERENCE RATHER THAN CONFERENCE OF EXPERTS,

AND SINCE GOVERNMENT POSITIONS NOT YET FORMULATED, ATTEMPT TO DEVELOP COMMON APPROACHES AS IN 1972 WOULD BE INAPPROPRIATE HERE. WE EXPECT THAT OUTCOME OF CONSULTATIONS WILL BE COMPENDIUM OF BASIC PROBLEMS, INDICATING EXTENT TO WHICH WESTERN GROUP APPEARS AGREED ON GENERAL APPROACH OR PRINCIPLES AND MAJOR ALTERNATIVE APPROACHES.

3. ALL DELEGATIONS, INCLUDING AUSTRIANS, ARE AGREED THAT ANTICIPATED PROPOSALS TO RESTRICT OR PROHIBIT USE OF SPECIFIC WEAPONS MUST BE KEPT SEPARATE FROM PROTOCOLS I AND II AT THE DIPLOMATIC CONFERENCE, AND THAT ANY CONSIDERATION OF SUCH PROPOSALS AT THE DIPLOMATIC LEVEL SHOULD BE PRECEDED BY CAREFUL CONSIDERATION AND DEVELOPMENT BY EXPERTS. FURTHER DISCUSSION OF TACTICS TO DEAL WITH PRESSURES FROM SWEDES AND OTHERS ON THIS SUBJECT EXPECTED TAKE PLACE THURSDAY.

4. TUESDAY MORNING, UK RAISED QUESTION WHETHER PASSAGE IN INTRODUCTION TO ICRC DRAFT ARTICLES DISCLAIMING INTENT TO "BROACH" PROBLEMS OF NUCLEAR, BACTERIOLOGICAL OR CHEMICAL WARFARE IS ADEQUATE TO AVOID POSSIBLE LEGAL IMPLICATIONS OF DRAFT ARTICLES RE USE OF SUCH WEAPONS. FRENCH EXPRESSED VIEW THAT SOMETHING NEEDED TO BE DONE EXPLICITLY TO EXCLUDE NUCLEAR WEAPONS USE FROM COVERAGE OF ARTICLES, NOTING THEY HAD ALSO RAISED THIS PROBLEM IN MEETING OF NATO DISARMAMENT EXPERTS (REPORTED USNATO 4876, PARA 9). FRG ALSO EXPRESSED CONCERN ON THIS POINT, SUGGESTING POSSIBILITY OF DECLARATIONS ON THIS SUBJECT AS PART OF FINAL ACT OF DIPLOMATIC CONFERENCE. US REP SAID USG HAD REACHED NO CONCLUSIONS AS TO MEANS OF DEALING WITH THIS ISSUE BUT NOTED IT PROBABLY UNREALISTIC TO EXPECT EXPLICIT RESOLUTION OF DIFFERENCES WHICH HAVE EXISTED AMONG LEGAL AUTHORITIES ON PRECISE STATUS OF SUCH WEAPONS UNDER PRESENT LAW, IN CONTEXT OF WIDELY-ATTENDED DIPLOMATIC CONFERENCE DIRECTED TOWARD ELABORATION UPON EXISTING PRINCIPLES. WESTERN THINKING ON MEANS OF APPROACHING THIS PROBLEM SHOULD PROCEED IN LIGHT OF THIS POLITICAL REALITY.

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